

By the Committees on Commerce, Economic Opportunities, and Consumer Services; Regulated Industries; and Senator Clary

310-2483-03

1 A bill to be entitled
2 An act relating to contracting; amending ss.
3 489.128, 489.532, F.S.; clarifying that the
4 prohibition on enforcement of construction
5 contracts extends only to enforcement by the
6 unlicensed contractor; clarifying the specific
7 licensure status required and timing of
8 licensure for purposes of determining the
9 enforceability of a construction contract;
10 clarifying the effect of an unenforceable
11 contract on other contracts and obligations;
12 clarifying that unlicensed contractors have no
13 lien or bond rights; clarifying that sureties
14 of unlicensed contractors have continuing bond
15 obligations; amending s. 713.02, F.S., relating
16 to liens for unlicensed contractors or
17 subcontractors to conform; amending s. 489.113,
18 F.S.; revising and clarifying the scope of work
19 that may be performed by a licensed contractor;
20 amending s. 489.117, F.S.; specifying
21 conditions under which a person may perform
22 specialty contracting services without
23 obtaining a local professional license;
24 amending ss. 489.119, 489.521, F.S.; revising
25 license requirements for certain business
26 organizations engaging in contracting;
27 providing for retroactive application;
28 providing legislative intent; amending s.
29 489.103, F.S.; exempting certain persons
30 licensed under the fire prevention and control
31 law from regulation under the contracting law;

1 providing severability; providing an effective
2 date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 489.128, Florida Statutes, is
7 amended to read:

8 489.128 Contracts entered into ~~performed~~ by unlicensed
9 contractors unenforceable.--

10 (1) As a matter of public policy, contracts entered
11 into on or after October 1, 1990, ~~and performed in full or in~~
12 ~~part by an unlicensed any contractor who fails to obtain or~~
13 ~~maintain a license in accordance with this part~~ shall be
14 unenforceable in law or in equity by the unlicensed
15 contractor.

16 (a) For purposes of this section, an individual is
17 unlicensed if the individual does not have a license required
18 by this part concerning the scope of the work to be performed
19 under the contract. A business organization is unlicensed if
20 the business organization does not have a primary or secondary
21 qualifying agent in accordance with this part concerning the
22 scope of the work to be performed under the contract.

23 (b) For purposes of this section, an individual or
24 business organization shall not be considered unlicensed for
25 failing to have an occupational license certificate issued
26 under the authority of chapter 205. A business organization
27 shall not be considered unlicensed for failing to have a
28 certificate of authority as required by ss. 489.119 and
29 489.127.

30 (c) For purposes of this section, a contractor shall
31 be considered unlicensed only if the contractor was unlicensed

1 on the effective date of the original contract for the work,
2 if stated therein, or, if not stated, the date the last party
3 to the contract executed it, if stated therein. If the
4 contract does not establish such a date, the contractor shall
5 be considered unlicensed only if the contractor was unlicensed
6 on the first date upon which the contractor provided labor,
7 services, or materials under the contract.

8 (2) Notwithstanding any other provision of law to the
9 contrary, if a contract is rendered unenforceable under this
10 section, no lien or bond claim shall exist in favor of the
11 unlicensed contractor for any labor, services, or materials
12 provided under the contract or any amendment thereto.

13 (3) This section shall not affect the rights of
14 parties other than the unlicensed contractor to enforce
15 contract, lien, or bond remedies. This section shall not
16 affect the obligations of a surety that has provided a bond on
17 behalf of an unlicensed contractor. It shall not be a defense
18 to any claim on a bond or indemnity agreement that the
19 principal or indemnitor is unlicensed for purposes of this
20 section.

21 Section 2. Section 489.532, Florida Statutes, is
22 amended to read:

23 489.532 Contracts entered into ~~performed~~ by unlicensed
24 contractors unenforceable.--

25 (1) As a matter of public policy, contracts entered
26 into on or after October 1, 1990, ~~and performed in full or in~~
27 ~~part~~ by an unlicensed ~~any~~ contractor ~~who fails to obtain or~~
28 ~~maintain his or her license in accordance with this part~~ shall
29 be unenforceable in law or in equity by the unlicensed
30 ~~contractor, and the court in its discretion may extend this~~
31 ~~provision to equitable remedies.~~

1 (a) For purposes of this section, an individual is
2 unlicensed if the individual does not have a license required
3 by this part concerning the scope of the work to be performed
4 under the contract. A business organization is unlicensed if
5 the business organization does not have a primary or secondary
6 qualifying agent in accordance with this part concerning the
7 scope of the work to be performed under the contract.

8 (b) For purposes of this section, an individual or
9 business organization shall not be considered unlicensed for
10 failing to have an occupational license certificate issued
11 under the authority of chapter 205.

12 (c) For purposes of this section, a contractor shall
13 be considered unlicensed only if the contractor was unlicensed
14 on the effective date of the original contract for the work,
15 if stated therein, or, if not stated, the date the last party
16 to the contract executed it, if stated therein. If the
17 contract does not establish such a date, the contractor shall
18 be considered unlicensed only if the contractor was unlicensed
19 on the first date upon which the contractor provided labor,
20 services, or materials under the contract.

21 (2) Notwithstanding any other provision of law to the
22 contrary, if a contract is rendered unenforceable under this
23 section, no lien or bond claim shall exist in favor of the
24 unlicensed contractor for any labor, services, or materials
25 provided under the contract or any amendment thereto.

26 (3) This section shall not affect the rights of
27 parties other than the unlicensed contractor to enforce
28 contract, lien, or bond remedies. This section shall not
29 affect the obligations of a surety that has provided a bond on
30 behalf of an unlicensed contractor. It shall not be a defense
31 to any claim on a bond or indemnity agreement that the

1 principal or indemnitor is unlicensed for purposes of this
2 section.

3 Section 3. Subsection (7) of section 713.02, Florida
4 Statutes, is amended to read:

5 713.02 Types of lienors and exemptions.--

6 (7) Notwithstanding any other provision of this part,
7 no lien shall exist in favor of any contractor, subcontractor,
8 or sub-subcontractor who is unlicensed as provided in s.
9 489.128 or s. 489.532 unless such contractor, subcontractor,
10 ~~or sub-subcontractor is licensed, if required to be licensed,~~
11 ~~as a contractor pursuant to the laws of the jurisdiction~~
12 ~~within which she or he is doing business.~~

13 Section 4. Paragraphs (c) and (d) of subsection (3) of
14 section 489.113, Florida Statutes, are amended to read:

15 489.113 Qualifications for practice; restrictions.--

16 (3) A contractor shall subcontract all electrical,
17 mechanical, plumbing, roofing, sheet metal, swimming pool, and
18 air-conditioning work, unless such contractor holds a state
19 certificate or registration in the respective trade category,
20 however:

21 (c) A general contractor shall not be required to
22 subcontract structural swimming pool work. All other swimming
23 pool work shall be subcontracted to an appropriately licensed,
24 certified, or registered swimming pool contractor.

25 (d) A general contractor, ~~on new site development~~
26 ~~work, site redevelopment work, mobile home parks, and~~
27 ~~commercial properties,~~ shall not be required to subcontract
28 the construction of a ~~the~~ main sanitary sewer collection
29 system, ~~the~~ storm collection system, or ~~and the~~ water
30 distribution system, not including the continuation of utility
31 lines from the mains to the buildings, and may perform any of

1 the services, on public or private property, for which a
2 license as an underground utility and excavation contractor is
3 required under this part.

4 Section 5. Paragraph (e) of subsection (4) of section
5 489.117, Florida Statutes, is amended to read:

6 489.117 Registration; specialty contractors.--

7 (4)

8 (e) Any person who is not required to obtain
9 registration or certification pursuant to s. 489.105(3)(d)-(o)
10 may perform specialty contracting services for the
11 construction, remodeling, repair, or improvement of
12 single-family residences, including a townhouse as defined in
13 the Florida Building Code, without obtaining a local
14 professional license if such person is under the supervision
15 of a certified or registered general, building, or residential
16 contractor. As used in this paragraph, supervision does not
17 require the existence of a direct contract between the
18 certified or registered general, building, or residential
19 contractor and the person performing specialty contracting
20 services.

21 Section 6. Subsection (8) is added to section 489.119,
22 Florida Statutes, to read:

23 489.119 Business organizations; qualifying agents.--

24 (8)(a) A business organization proposing to engage in
25 contracting is not required to apply for or obtain
26 authorization under this part to engage in contracting if:

27 1. The business organization employs one or more
28 registered or certified contractors licensed in accordance
29 with this part who are responsible for obtaining permits and
30 supervising all of the business organization's contracting
31 activities;

1 2. The business organization engages only in
2 contracting on property owned by the business organization or
3 by its parent, subsidiary, or affiliated entities; and

4 3. The business organization, or its parent entity if
5 the business organization is a wholly owned subsidiary,
6 maintains a minimum net worth of \$20 million.

7 (b) Any business organization engaging in contracting
8 under this subsection shall provide the board with the name
9 and license number of each registered or certified contractor
10 employed by the business organization to supervise its
11 contracting activities. The business organization is not
12 required to post a bond or otherwise evidence any financial or
13 credit information except as necessary to demonstrate
14 compliance with paragraph (a).

15 (c) A registered or certified contractor employed by a
16 business organization to supervise its contracting activities
17 under this subsection shall not be required to post a bond or
18 otherwise evidence any personal financial or credit
19 information so long as the individual performs contracting
20 activities exclusively on behalf of a business organization
21 meeting all of the requirements of paragraph (a).

22 Section 7. Subsection (10) is added to section
23 489.521, Florida Statutes, to read:

24 489.521 Business organizations; qualifying agents.--

25 (10)(a) A business organization proposing to engage in
26 contracting is not required to apply for or obtain
27 authorization under this part to engage in contracting, if:

28 1. The business organization employs one or more
29 registered or certified contractors licensed in accordance
30 with this part who are responsible for obtaining permits and
31

1 supervising all of the business organization's contracting
2 activities;

3 2. The business organization engages only in
4 contracting on property owned by the business organization or
5 by its parent, subsidiary, or affiliated entities; and

6 3. The business organization, or its parent entity if
7 the business organization is a wholly owned subsidiary,
8 maintains a minimum net worth of \$20 million.

9 (b) Any business organization engaging in contracting
10 under this subsection shall provide the board with the name
11 and license number of each registered or certified contractor
12 employed by the business organization to supervise its
13 contracting activities. The business organization is not
14 required to post a bond or otherwise evidence any financial or
15 credit information except as necessary to demonstrate
16 compliance with paragraph (a).

17 (c) A registered or certified contractor employed by a
18 business organization to supervise its contracting activities
19 under this subsection shall not be required to post a bond or
20 otherwise evidence any personal financial or credit
21 information so long as the individual performs contracting
22 activities exclusively on behalf of a business organization
23 meeting all of the requirements of paragraph (a).

24 Section 8. The sections of this act amending sections
25 489.128, 489.532, and 713.02, Florida Statutes, are intended
26 to be remedial in nature and to clarify existing law. The
27 amendments made by these sections of the act shall apply
28 retroactively to all actions, including any action on a lien
29 or bond claim, initiated on or after, or pending as of, the
30 effective date of this act. If the retroactivity of any
31 particular provision of these sections, or its retroactive

1 application to any person or circumstance, is held invalid,
2 this invalidity shall not affect the retroactive application
3 of that particular provision to any other person or
4 circumstance and shall not affect the retroactive application
5 of any other provision in these sections of the act.

6 Section 9. Notwithstanding the section of this act
7 providing for retroactive application of amendments to
8 sections 489.128, 489.532, and 713.02, Florida Statutes, it is
9 the intention of the Legislature that this act shall not apply
10 to Case No. CA 02-5113 AB, currently pending in the Circuit
11 Court in and for Palm Beach County, Florida, or any related
12 cause of action arising out of this case, or the underlying
13 facts of this case, now or in the future.

14 Section 10. Subsection (20) is added to section
15 489.103, Florida Statutes, to read:

16 489.103 Exemptions.--This part does not apply to:
17 (20) A person licensed under s. 633.061(1)(d) when
18 performing work authorized by such license.

19 Section 11. If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 invalidity does not affect other provisions or applications of
22 the act which can be given effect without the invalid
23 provision or application, and to this end the provisions of
24 this act are severable.

25 Section 12. This act shall take effect upon becoming a
26 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 1382

4 The committee substitute for committee substitute:

- 5 1) adds a cross-reference alerting real property owners that
6 they may have a defense to a lien on their property if
the contractor is unlicensed;
- 7 2) clarifies that a general contractor may do structural
8 pool work, but must subcontract all other types of pool
work;
- 9 3) adds language which makes clear that a general contractor
10 may perform all of the same services as an underground
utility contractor on public property;
- 11 4) removes a section amending the lien law that may have
12 inadvertently made a homeowner's property subject to a
subcontractor's lien for work the owner never authorized
13 in its direct contract with the general contractor;
- 14 5) clarifies that supervision by a general contractor of a
specialty contractor does not require a direct contract;
- 15 6) exempts certain persons licensed under the fire
16 prevention and control law from regulation under the
general contracting law; and
- 17 7) provides an exemption from the provisions of the bill to
18 a specific case in the Circuit Court of Palm Beach
County, Florida.
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